IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF NORTH CAROLINA CHARLOTTE DIVISION CASE NO. 3:21-MJ-178-DCK-1

UNITED STATES OF AMERICA,)	
Plaintiff,)	
v.)	<u>ORDER</u>
DEREK ANTHONY RAWLINGS, JR,)	
Defendant.)))	

THIS MATTER IS BEFORE THE COURT on Defendant's "Motion To Dismiss The Indictment With Prejudice For A Speedy Trial Act Violation" (Document No. 14) filed June 24, 2022. Having carefully considered the motion and the record, the undersigned will deny the motion.

BACKGROUND

Defendant was charged by Criminal Complaint on July 26, 2021 for violation of 49 U.S.C. § 46506(2). See (Document No. 1). According to the Affidavit attached to the Criminal Complaint, Defendant "exposed his penis and masturbated in view of a passenger" while on board a commercial flight traveling from Newark, New Jersey to Charlotte, North Carolina on May 3, 2021. (Document No. 1-1, p. 1). Defendant was arrested on August 2, 2021 in the Western District of Tennessee.

Defendant made his initial appearance before the undersigned in this Court on August 23, 2021. Defendant was released with modified conditions, including that his movements were restricted to the Western District of North Carolina, the Western District of Tennessee, and the Northern District of Mississippi and that he not fly commercially while the case was ongoing. See

(Document No. 6). Defendant also consented to trial before a U.S. Magistrate Judge on August 23, 2021. (Document No. 7).

On June 24, 2022, Defendant filed the pending "Motion To Dismiss The Indictment With Prejudice For A Speedy Trial Act Violation" (Document No. 14). The "Government's Response In Opposition To Defendant's Motion To Dismiss The Indictment With Prejudice For A Speedy Trial Act Violation" (Document No. 15) was filed July 1, 2022. Following the Court's July 20, 2022 Order (Document No. 18) directing Defendant to file a reply brief supporting his Motion to Dismiss, Defendant filed his "Response To Government's Opposition To Motion To Dismiss The Indictment With Prejudice For A Speedy Trial Act Violation" (Document No. 20) on July 25, 2022.

The pending motion is now ripe for review and disposition.

ANALYSIS

Defendant argues that the charging Complaint in his case should be dismissed with prejudice because the Speedy Trial Act requires that his case be brought to trial within seventy days of his consent to trial before a United States Magistrate Judge. (Document No. 14, p. 3) (citing 18 U.S.C. § 3161(c)(1)). According to Defendant, "[t]he seventieth day, November 1, 2021, came and went without notice from the government or action by the Court." (Document No. 14, p. 3). The relevant provision states: "the trial of a defendant charged...with the commission of an offense shall commence within seventy days...from the date of [Defendant's consent to trial before a magistrate judge on a complaint]." 18 U.S.C. § 3161(c)(1). However, the Speedy Trial Act's definition of "an offense" specifically excludes Class B misdemeanors. 18 U.S.C. § 3172(2).

Defendant's offense - his alleged violation of 49 U.S.C. § 46506(2) - is a Class B

misdemeanor, because the maximum term of imprisonment is ninety days. See D.C. CODE § 22-

1312; 18 U.S.C. § 3559(a)(7) (defining a Class B misdemeanor as an offense with a maximum

term of imprisonment of "six months or less but more than thirty days"). In his reply brief,

Defendant essentially concedes that the Government is correct that the Speedy Trial Act does not

apply to Class B misdemeanors. (Document No. 20, p. 1) ("[i]t appears that the government may

be correct").

Therefore, because Defendant's alleged offense is a Class B misdemeanor, the Speedy

Trial Act does not apply and Defendant's motion is therefore denied. See United States v. Sued-

Jimenez, 275 F.3d 1, 8-9 (1st Cir. 2001); United States v. Boyd, 214 F.3d 1052, 1057 (9th Cir.

2000).

IT IS, THEREFORE, ORDERED that Defendant's "Motion To Dismiss The Indictment

With Prejudice For A Speedy Trial Act Violation" (Document No. 14) is **DENIED**.

SO ORDERED.

Signed: July 26, 2022

David C. Keesler

United States Magistrate Judge

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